

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 7601 of 2007(E)

CMP.465/2007 of J.M.F.C., KAYAMKULAM
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PETITIONER:

KOCHUMON, AGED 40 YEARS,
S/O.SHAMSUDEEN, PUTHUVEL VEEDU,
CHANAKADAVOM MURI, KAYAMKULAM VILLAGE.

BY ADV. SRI.M.NARENDRA KUMAR
SRI.S.MOHANAN

RESPONDENTS:

1. ANISH KUMAR, AGED 30 YEARS,
S/O.DAMODARAN, RATHEESH BHAVANAM,
IYERKALA NADUVIL, PUTHENAMBALAM VILLAGE,
KOLLAM DISTRICT.

2. STATE OF KERALA REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY GOVERNMENT PLEADER SRI.S.U.NAZER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

R.BASANT, J

W.P(C).No.7601 of 2007

Dated this the 7th day of March, 2007

J U D G M E N T

The petitioner is the complainant in a prosecution initiated by him under Section 138 of the N.I Act. The petitioner's complaint was returned by the learned Magistrate as per his order dated 20.01.2007. The relevant order reads as follows:

“Sworn statement received. No cause of action as the witness never deposed that the transaction is within the jurisdiction of this Court. Hence returned to the complainant to be present before proper Court having jurisdiction.”

2. The learned counsel for the petitioner submits that the learned Magistrate has erred grossly in directing the return of the complaint to the petitioner. The learned Magistrate has not borne in mind the principles in **Bhaskaran v. Shankaran Vaidhyan Balan** [1999 (3) K.L.T 440]. In these circumstances, the decision of the learned Magistrate directing return of the complaint is unjustified. At any rate, there was sufficient averments to receive the complaint postponing detailed consideration after appearance of the accused, submits the learned counsel for the petitioner. The counsel submits that the averments made in the complaint and the averments made in the affidavit filed under Section 145 of the N.I Act as also the statement of witnesses were certainly sufficient to induce the

requisite satisfaction in the mind of the learned Magistrate that cognizance deserves to be taken.

3. I have gone through the averments in the complaint and the affidavit filed under Section 145 of the N.I Act. It cannot be denied that there is specific assertion that the amount was paid and the cheque was issued at Kayamkulam within the jurisdiction of the court. There is also specific averments to show that the cheque was presented for collection by the complainant who has his permanent residence at Kayamkulam at a bank at Kayamkulam. Intimation of dishonour was served on the complainant through the bank at Kayamkulam. Demand was made by the complainant at Kayamkulam through his counsel, who was also at Kayamkulam. The decision in **Bhaskaran v. Shankaran Vaidhyan Balan** (supra) makes it very clear that concatenation of the five events namely,

- i) Drawing of the cheque,
- ii) Presentation of the cheque to the Bank,
- iii) Returning of the cheque unpaid by the drawee bank,
- iv) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,
- v) Failure of the drawer to make payment within 15 days of the receipt of the notice - would give rise to the cause of action. In the decision in **Ahammed Kutty Haji v. State of Kerala** [2006 (4) ILR Kerala 949], an attempt was made to interpret the dictum in

Bhaskaran v. Shankaran Vaidhyan Balan in the light of the facts of that case. It was held that the mere fact that the demand on behalf of the complainant was made by a counsel residing or having his office at a different place will not confer jurisdiction on the court at such different place to entertain the complaint under Section 138 of the N.I Act. In the instant case, there are very specific averments to show that the transaction was entered into and the cheque was handed over at Kayamkulam within the jurisdiction of the court. There is also specific allegation to show that the demand was made by the complainant at Kayamkulam through a counsel at Kayamkulam. Payment must have been made to the complainant and that was not made also at Kayamkulam, it is alleged. In these circumstances, I find no merit in the conclusion of the learned Magistrate that the learned Magistrate does not have jurisdiction to entertain the complaint.

4. This Writ Petition is, in these circumstances, allowed. The impugned order directing return of the complaint is set aside. The petitioner shall forthwith, ie. within 7 days, re-present the complaint before the learned Magistrate, whereupon the learned Magistrate shall pass appropriate fresh orders regarding issue of processes and the same shall be reckoned as one passed in continuation of the earlier initial presentation of the complaint.

5. Hand over a copy of this judgment to the learned counsel for the petitioner forthwith for production before the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-